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Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

CHRISTINA BELL CONNORS,

Petitioner,

vs.

THE STERLING MILK COMPANY and WEST TRIMBLE, ADMINISTRATOR OHIO BUREAU OF WORKERS' COMPENSATION,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Ohio

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Respondent is satisfied with the Statement of the Case presented in Petitioner's Petition for Writ of Certiorari.

REASONS FOR DENYING THE WRIT OF CERTIORARI

I. Ohio Revised Code § 4123.01(C)(1) Does Not Contravene the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Pursuant to Ohio Rev. Code § 4123.01(C)(1), a compensable "injury" under Ohio's workers' compensation laws does not include "[p]sychiatric conditions except where the conditions have arisen from an injury or occupational disease." Therefore, if a psychiatric condition arose from a physical injury or occupational disease, it is compensable under Ohio Rev. Code § 4123.01(C)(1). However, a purely psychiatric injury, not occasioned by physical injury or occupational disease, is not compensable and has never been recognized as a compensable injury under Ohio law. *Rambaldo v. Accurate Die Casting*, 65 Ohio St.3d 281, 283; 603 N.E.2d 975, 977 (1992); *Ryan v. Connor*, 28 Ohio St.3d 406, 409; 503 N.E.2d 1379, 1381 (1986).

Petitioner argues that the classification enunciated in Ohio Rev. Code § 4123.01(C)(1) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Petitioner's argument is wholly without merit.

The standard of review for an equal protection claim depends on whether the relevant right is a fundamental right, or whether the relevant class is a suspect class. In the instant case, both parties agree that the relevant standard of review is encompassed in the "rational basis" test because the classification does not burden a suspect group or a fundamental interest. *Vance v. Bradley*, 440 U.S. 93, 97 (1979).

This Court has held that "[i]n the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect." *Daindridge v. Williams*, 397 U.S. 471, 485 (1970). Under the rational basis test, in order for Ohio Rev. Code § 4123.01(C)(1) to contravene the Equal Protection Clause, "the varying treatment of different groups or persons [must be] so unrelated to the achievement of any combination of legitimate purposes that [the Court] can only conclude that the legislature's actions were irrational." *Vance*, 440 U.S. at 97.

In *Fields v. Youngstown*, No. 88 CA 89, unreported, 1989 Ohio App. LEXIS 1964 (7th Dist., May 30, 1989), the Ohio Court of Appeals upheld the constitutionality of Ohio Rev. Code § 4123.01(C)(1) in the face of an equal protection attack because it determined that it furthered one or all of the following legitimate legislative objectives:

1. The State has a legitimate interest in maintaining the self-supporting nature of the workers' compensation fund;

2. The State has a legitimate interest in distributing the available resources in a manner that keeps

benefit payments at an adequate level for injuries that are covered; and

3. The State has a legitimate concern in maintaining the contribution rate at a level that will not unduly burden participating employers.

Id. at *8. Several other Ohio Appellate courts have reiterated this ruling. *See e.g., Zaricki v. Lace Die Casting,* No. 44254, slip opinion at p. 4 (8th Dist., July 8, 1982); *Duty v. Connor,* No. 44164, slip opinion at p. 12 (8th Dist., September 2, 1982); *Neil v. Mayfield,* No. CA 10881, unreported, 1988 Ohio App. LEXIS 2979 (2nd Dist., July 22, 1988).

The Supreme Court of Montana has also recently rejected an equal protection challenge on a comparable workers' compensation statute. In *Stratemeyer v. Lincoln Cty.,* 259 Mont. 147; 855 P.2d 506 (1993), the Supreme Court of Montana considered the constitutionality of a workers' compensation statute which, as under Ohio Rev. Code § 4123.01(C)(1), did not compensate purely psychological injuries. 855 P.2d at 508; 259 Mont. 147. The Court upheld the validity of the Montana Statute ruling, in pertinent part, that "the classification at hand rationally relates to a legitimate governmental objective of controlling the costs of the program and providing benefits." 855 P.2d at 511; 259 Mont. 147.

In addition, it cannot be disputed that Ohio Rev. Code § 4123.01(C)(1) does in fact further the aforementioned legitimate legislative objectives. In 1981, a California law took effect which compensated workers for a purely mental condition so long as the condition was at least ten percent (10%) work related. Ten years later, the number of state reported pure psychiatric claims had

risen seven-hundred percent (700%). Jan H. Schut, *From the Folks Who Brought You the Hot Tub,* Institutional Investor, Oct. 1991, at 171. Not surprisingly, in 1991, California employers paid the second highest workers' compensation rates in the nation. Specifically, employers, on average, pay $3.08 per $100 which is 53% higher than employers nationwide. Bradley J. Fikes, *Stress Workers' Claims Drop, Problems Remain,* San Diego Bus. J., Sept. 23, 1991, at Vol. 12, No. 37, Sect. 1, p. 15.

California workers' compensation law is also causing businesses to move out of California, or to avoid locating in California. Donna K.H. Walters, *Workers' Comp Reforms Fail to Quell Discontent,* L.A. Times, Mar. 17, 1991, at D1. One of California's largest workers' compensation insurers, Industrial Indemnity, "says [it is] impossible to do business [in California] because there is too much litigation, medical costs are too high and expensive mental stress claims are skyrocketing." *Id.* Small businesses are having a difficult time paying workers' compensation rates, and worry that they may be forced out of the area. Tim Trujillo, owner of a small roofing company, stated that he pays close to $40 for workers' compensation insurance for every $100 he pays for salary. *Id.*

Recognition of purely psychological injuries as a compensable injury under the workers' compensation laws also leads to an increase in litigation. Purely psychological injuries are more likely to be contested, more difficult to prove, more difficult to defend, and more expensive to compensate because the average psychiatric claim takes thirty-nine (39) weeks to resolve whereas the average traumatic injury takes twenty-four (24) weeks to resolve. Angela K. Calise, *Lawyers Seen to Spur Stress*

Claims, National Underwriter, Property & Casualty/Risk & Benefits Mgmt. Edition, April 18, 1994, at 9.

Respondent submits that the aforementioned authority aptly demonstrates that Ohio Rev. Code § 4123.01(C)(1) clearly furthers one of three legitimate legislative objectives, and therefore, does not contravene the Equal Protection Clause.

II. Ohio Revised Code § 4123.01(C)(1) Does Not Violate the Due Process Guarantees of the Fourteenth Amendment to the United States Constitution.

Petitioner argues that Ohio Rev. Code § 4123.01(C)(1) violates the Due Process guarantees of the Fourteenth Amendment to the United States Constitution because it creates an "irrebuttable presumption." Petitioner's argument is wholly without merit.

First, Ohio Rev. Code § 4123.01(C)(1) does not present an "irrebuttable presumption," but rather, a legislative classification. *See, e.g., Kirk v. Secretary of Health and Human Services*, 667 F.2d 524, 533 (6th Cir. 1981) (interpreting new social security medical-vocational guidelines) (citing Note, *The Conclusive Presumption Doctrine: Equal Protection or Due Protection?*, 72 Mich. L. Rev. 800, 827-828 (1974); Note, *Irrebuttable Presumptions: An Illusory Analysis*, 27 Stan. L. Rev. 449, 463 (1975); Note, *The Irrebuttable Presumption Doctrine in the Supreme Court*, 87 Harv. L. Rev. 1534, 1544 (1974). Petitioner cannot attack the validity of Ohio Rev. Code § 4123.01(C)(1) merely by labeling the classification an irrebuttable presumption. *See e.g., Darks v. Cincinnati*, 745 F.2d 1040, 1044 (6th Cir. 1984).

Second, the authority cited by Petitioner, *Stanley v. Illinois*, 405 U.S. 645 (1972) and *Vlandis v. Kline*, 412 U.S. 441 (1973) is not relevant to the instant case because the instant case does not implicate a constitutionally protected interest or status. *Weinberger v. Salfi*, 422 U.S. 749, 770-772 (1974). This Court has made it abundantly clear that in the realm of social welfare, a statutory classification does not enjoy a constitutionally protected status. *Id.* at 772. Therefore, in order to withstand scrutiny under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, the classification may not invidiously discriminate on the basis of a "bare congressional desire to harm a politically unpopular group," *U.S. Dep't of Agriculture v. Moreno*, 413 U.S. 528, 534 (1973), or "on the basis of criteria which bear no rational relation to a legitimate legislative goal." *See e.g., Weinberger*, 422 U.S. at 772.

Respondent has presented this Court with overwhelming evidence that Ohio Rev. Code § 4123.01(C)(1) is rationally related to a legitimate legislative goal in its previous argument, and therefore, for the sake of brevity, it will not reiterate that argument here.

CONCLUSION

In pertinent part, the Court will consider granting a writ of certiorari when "a state court of last resort has decided a federal question in a way that conflicts with a decision of another state court of last resort or of a United States court of appeals," or when "a state court . . . has decided an important question of federal law which has

not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court." Rule 10(1)(b) and (c) of the Supreme Court. These considerations do not pertain to the instant case.

Ohio Rev. Code § 4123.01(C)(1) represents a policy decision of the Ohio legislature that a purely psychiatric injury is not a compensable injury under Ohio's workers' compensation laws. California's "experiment" with compensating purely psychiatric injuries demonstrates that this statutory classification is rationally related to any one of three legitimate legislative goals: (1) maintaining the self-supporting nature of the fund; (2) distributing the available resources in a manner that keeps benefit payments at an adequate level for injuries that are covered; and (3) maintaining the contribution rate at a level which will not unduly burden participating employers. Therefore, under the current law of the Court, Ohio Rev. Code § 4123.01(C)(1) withstands scrutiny under an equal protection and due process analysis.

If the Court were to intervene in Ohio's policy decision by granting the instant petition, "[t]his would represent a degree of judicial involvement in the legislative function which [the Court has] eschewed except in the most unusual circumstances, and which is quite unlike the judicial role mandated by *Dandridge, Belcher,* and *Nestor,* as well as a host of cases arising from legislative efforts to regulate private business enterprises."

Weinberger, 422 U.S. at 773. This is something the Court should not entertain.

Respectfully submitted,

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